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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[ED-2016-OSERS-0024]

Proposed priority, and requirements--Technical Assistance  
on State Data Collection--Assessment Center

[CFDA Number: 84.373A.]

AGENCY: Office of Special Education and Rehabilitative  
Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The Assistant Secretary for the Office of Special  
Education and Rehabilitative Services (OSERS) proposes a  
priority and requirements under the Technical Assistance on  
State Data Collection program. The Assistant Secretary may  
use this priority and these requirements for competitions  
in fiscal year (FY) 2016 and later years. We take this  
action to focus attention on an identified need to address  
national, State, and local assessment issues related to  
students with disabilities, including students with  
disabilities who are English Learners<sup>1</sup> (ELs) with  
disabilities.

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<sup>1</sup> For more information see: [www.ed.gov/news/press-releases/us-departments-education-and-justice-release-joint-guidance-ensure-english-learner-students-have-equal-access-high-quality-education](http://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-joint-guidance-ensure-english-learner-students-have-equal-access-high-quality-education).

DATES: We must receive your comments on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use Regulations.gov" in the Help section.

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this proposed priority and requirements, address them to David Egnor, U.S. Department of Education, 400 Maryland Avenue, SW., room 5163, Potomac Center Plaza, Washington, DC 20202-5076.

Privacy Note: The U.S. Department of Education's (Department's) policy is to make all comments received from

members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: David Egnor. Telephone: (202) 245-7334 or by email: [David.Egnor@ed.gov](mailto:David.Egnor@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the specific section of the proposed priority or requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential

benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5163, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the

Secretary the authority to reserve funds appropriated under Part B of the IDEA to provide technical assistance activities authorized under section 616(i) of IDEA. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of IDEA section 616 are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide technical assistance, where needed, to improve the capacity of States to meet the data collection requirements under IDEA Parts B and C, which include the data collection and reporting requirements in sections 616 and 618 of IDEA.

Program Authority: 20 U.S.C. 1411(c) and 1416(i).

Applicable Program Regulations: 34 CFR 300.702.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Background:

One essential part of successfully educating students is assessing their progress in learning to high standards. Done well and thoughtfully, assessments are tools for learning and promoting equity. They provide necessary information for educators, families, the public, and

students themselves to measure progress and improve outcomes for all learners.

Section 612(a)(16) of the IDEA requires that all students with disabilities are included in all general State and districtwide assessments, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. In accordance with Federal law, there are multiple ways for students with disabilities to participate in State and districtwide assessments: general assessments, general assessments with accommodations, alternate assessments that are based on alternate academic achievement standards for students with the most significant cognitive disabilities, and alternate assessments that are based on grade-level academic achievement standards. (For additional information, see section 1111 of the ESEA.)

Further, research shows that (1) instruction for students with disabilities is increasingly aligned with State academic content standards, (2) State and districtwide assessment data are more frequently used to

make educational decisions for these students, and (3) participating in State and districtwide assessments and being included in accountability systems may have positive effects on educational results for students with disabilities (Aron & Loprest, 2012; Courtade, Spooner, & Browder, 2012; Kurz, Elliott, Lemons, Zigmond, Kloo, & Kettler, 2014). However, teachers cannot simply wait until the results of State and districtwide assessments are made available to make educational decisions. In addition to analyzing results from State (typically summative) assessments, formative assessments are increasingly being used before, during, and after instruction to help teachers understand their students' learning and improve their own instructional practices (Conderman & Hedin, 2012).

Despite the progress State educational agencies (SEAs) and local educational agencies (LEAs) have made in including students with disabilities in assessments and accountability systems, SEAs and LEAs continue to face challenges. These challenges include integrating data from dissimilar tests (e.g., general, accommodated, and alternate) into a single accountability system, developing consistent SEA and LEA policies on assessment accommodations that provide maximum accessibility while

maintaining test reliability and validity, and analyzing and using formative and summative assessment data to improve instruction and accountability for students with disabilities.

In addition, one of the most complex challenges faced by SEAs and LEAs is developing and administering English language proficiency (ELP) assessments to students who are both ELs and students with disabilities (U.S. Department of Education, 2014). Properly identifying these students is also a significant challenge if their disabilities are masked by their limited English proficiency, or vice versa. Improper identification may lead to inappropriate instruction, assessment, and accommodation for these students. Linguistic and cultural biases may also affect the validity of assessment for ELs with disabilities (Lane & Leventhal, 2015).

Finally, the Department notes that in many schools, there may be unnecessary testing and insufficient clarity of purpose applied to the task of assessing students, including students with disabilities, consuming too much instructional time and creating undue stress for educators and students. (For more information, see the Department's February 2nd, 2016, letter to Chief State School Officers



available at:

<http://www2.ed.gov/admins/lead/account/saa/16-0002signedcsso222016ltr.pdf>.)

These and other complex challenges will continue to arise in this dynamic landscape as States adopt college- and career-ready academic content standards and develop new, valid, more instructionally useful and inclusive assessments aligned to these standards.

Developing these new assessments has been challenging and time-consuming, and States must continue to ensure that all students with disabilities can fully participate in State and districtwide assessments. States and LEAs will also need support in identifying and implementing evidence-based practices for effectively including children with disabilities in State and districtwide assessments. Moreover, evidence-based methods for analyzing and effectively using State and districtwide assessment data to improve instruction and accountability for students with disabilities will continue to need further development and refinement.

Accordingly, we propose a priority in this notice that will be utilized in a competition to fund a Center to support SEAs and LEAs in analyzing and effectively using

assessment data to improve results for children with disabilities. Under the proposed priority in this notice, as part of the Technical Assistance on State Data Collection program, the Center will (1) assist States in analyzing and using assessment data to better achieve the State Identifiable Measurable Result(s) (SIMR), which were described in their IDEA Part B State Systemic Improvement Plans (SSIPs) that were developed in accordance with section 616(b) of IDEA and OSEP guidance on Indicator B-17 of the Federal Fiscal Year (FFY) 2013 through FFY 2018 IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR);<sup>2</sup> and (2) assist State efforts to provide TA to LEAs in analyzing and using assessment data to support achievement of the SIMR, as appropriate.

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<sup>2</sup> In accordance with section 616(b) of the IDEA, States must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve such implementation. As part of the SPP/APR, each State shall establish measurable and rigorous targets for each indicator established by the Secretary. In the Results Driven Accountability System, OSERS required States under Indicator 17 to develop a State Systemic Improvement Plan (SSIP) as part of their FFY 2013 through FFY 2018 IDEA Part B SPPs/APRs. The SSIP must include: (1) FFY 2013 baseline data expressed as a percentage and aligned with the State-identified Measurable Result(s) (SIMR) for children with disabilities; (2) measurable and rigorous targets (expressed as a percentage) for each of the five years for FFY 2014 through FFY 2018, with the FFY 2018 target reflecting improvement over the FFY 2013 baseline data; and (3) a plan that includes an explanation of how the improvement strategies were selected and will lead to measurable improvement in the SIMR.

In addition to the priority we are proposing in this notice, we plan to establish in the applicable notice inviting applications an additional priority under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program that will support the Center. This additional priority is from allowable activities specified or otherwise authorized in sections 663 and 681(d) of the IDEA (20 U.S.C. 1463 and 1481(d)). Under section 681(d) of the IDEA, the Secretary may, without regard to rulemaking, fund activities under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. Therefore, we are not proposing that priority in this notice. However, because we plan to use the additional priority to support the Center, in connection with the priority under the Technical Assistance on State Data Collection program and requirements we propose in this notice, we believe comments on the priority and requirements proposed in this notice may be informed by including relevant portions of the text of this additional priority. An abbreviated version of that additional priority is included in Appendix 1 to this notice. The complete priority will be issued at a later date.

The priority we are proposing in this notice is:

Proposed Priority: Technical Assistance to States on the Analysis and Use of Assessment Data to Support Achievement of the State Identified Measurable Result(s).

The purpose of the priority we are proposing in this notice is to assist States in analyzing and using assessment data to support the achievement of the SIMR as described in their SSIP. [This proposed priority is authorized under sections 611(c) and 616(i) of the IDEA (20 U.S.C. 1411(c) and 1416(i)).]

As detailed earlier in the background section, research indicates that SEAs and LEAs continue to face challenges in analyzing and using assessment data to improve instruction and accountability for students with disabilities. SEAs also need assistance analyzing State assessment data to better achieve their SIMRs. Beginning in FFY 2013, States were required to provide, as part of Phase I of the SSIP, a statement of the result(s) the State intends to achieve through implementation of the SSIP, which is referred to as the SIMR for children with disabilities. The State must establish "measurable and rigorous" targets for each successive year of the SPP/APR (FFYs 2014 through 2018). The end target (for FFY 2018)

must demonstrate improvement over the FFY 2013 baseline data. At least 42 States have focused their IDEA Part B SIMR on improving academic achievement as measured by assessment results for children with disabilities. These States will need assistance in analyzing and using State assessment data to promote academic achievement and to improve results for children with disabilities.

Proposed Priority:

The purpose of this priority is to (1) assist States in analyzing and using assessment data to better achieve the SIMR as described in their IDEA Part B SSIPs, and (2) assist State efforts to provide technical assistance (TA) to LEAs in analyzing and using State and districtwide assessment data to better achieve the SIMR, as appropriate. The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEA personnel to analyze and use assessment data to better achieve the SIMR described in the IDEA Part B SSIP, including the uses of assessment data to evaluate and improve educational policy, inform instructional programs and improve instruction for students with disabilities; and

(b) Increased capacity of SEA personnel to provide TA to LEAs in the analysis and use of State and districtwide assessment data to improve instruction of students with disabilities and better achieve the SIMR.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an

application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

#### PROPOSED REQUIREMENTS

##### Background:

In addition to the programmatic requirements contained in the proposed priority in this notice and the additional priority included in Appendix 1, to be considered for funding applicants must meet the following requirements.

##### Proposed Requirements:

The Assistant Secretary proposes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

Applications that:

(a) Demonstrate, in the narrative section of the application under "Significance of the Project," how the proposed project will--

(1) Address the needs of SEAs and LEAs to analyze and use State and districtwide assessment data in instructional decision-making to improve teaching and learning for students with disabilities. To meet this requirement the applicant must--

(i) Present applicable national, State, and local data demonstrating the needs of SEAs and LEAs to analyze and use State and districtwide assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Demonstrate knowledge of current educational issues and policy initiatives about analyzing and using assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(iii) Describe the level at which SEAs and LEAs currently analyze and use State and districtwide assessment data in instructional decision-making to improve teaching and learning for students with disabilities.

(2) Improve the analysis and use of assessment data to improve teaching and learning for students with disabilities.

(b) Demonstrate, in the narrative section of the application under "Quality of the Project Services," how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or



disability. To meet this requirement, the applicant must describe how it will--

- (i) Identify the needs of the intended recipients for technical assistance (TA) and information; and

- (ii) Ensure that products and services meet the needs of the intended recipients (e.g., by creating materials in formats and languages accessible to the stakeholders served by the intended recipients);

- (2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

- (i) Measurable intended project outcomes; and

- (ii) The logic model (see paragraph (f)(1)) by which the proposed project will achieve its intended outcomes;

- (3) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

- (4) Be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe--

(i) The current research on the effectiveness of analyzing and using assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(ii) How the proposed project will incorporate current evidence-based practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

(i) How it proposes to identify or develop the knowledge base on analyzing and using assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Its proposed approach to universal, general TA,<sup>3</sup> which must identify the intended recipients of the products and services under this approach;

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<sup>3</sup> "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

(iii) Its proposed approach to targeted, specialized TA,<sup>4</sup> which must identify--

(A) The intended recipients of the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,<sup>5</sup> which must identify--

(A) The intended recipients of the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including

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<sup>4</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>5</sup>"Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build training systems that include professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, analysis and use of assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(E) Its proposed plan for collaborating and coordinating with Department of Education funded TA investments and IES research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application, under "Quality of the Evaluation Plan," include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including the extent to which the project's products and services have reached its target population, and measures of intended outcomes or results to assess the project's progress toward achieving intended outcomes.

In designing the evaluation plan, the project must--

(1) Designate, with the approval of the OSEP project officer, a project liaison staff person with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to

Improve Project Performance (CIPP),<sup>6</sup> the project director, and the OSEP project officer on the following tasks:

(i) Revise, as needed, the logic model (see paragraph (f)(1) this priority) submitted in the grant application to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting;

(ii) Refine the evaluation design and instrumentation proposed in the application consistent with the logic model (e.g., preparing evaluation questions about significant program processes and outcomes; developing quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and progress toward achieving intended outcomes; selecting respondent samples if appropriate; designing instruments or identifying data sources; and identifying analytic strategies); and

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<sup>6</sup> The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (i.e., those awarded \$500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased technical assistance in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

(iii) Revise, as needed, the evaluation plan submitted in the grant application such that it clearly--

(A) Specifies the measures and associated instruments or sources for data appropriate to the evaluation questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completion of the plan;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's intensive review for continued funding described under the heading Fourth and Fifth Years of the Project; and

(C) Can be used to assist the project director and the OSEP project officer, with the assistance of CIPP as needed, to specify the performance measures to be addressed in the project's Annual Performance Report;

(2) Cooperate with CIPP staff in order to accomplish the tasks described in paragraph (c)(1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (c)(1) and (c)(2) of this section and implementing the evaluation plan.

(d) Demonstrate, in the narrative section of the application under "Adequacy of Project Resources," how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the Management Plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--



(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must--

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models:

[www.researchutilization.org/matrix/logicmodel\\_resource3c.html](http://www.researchutilization.org/matrix/logicmodel_resource3c.html) and [www.osepideasthatwork.org/logicModel/index.asp](http://www.osepideasthatwork.org/logicModel/index.asp)

(2) Include, in Appendix A, a conceptual framework for the project;

(3) Include, in Appendix A, person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period;

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A two and one-half day project directors' meeting in Washington, DC, during each year of the project period;

(iii) Three trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as--

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be

conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

References:

Aron, L., & Loprest, P. (2012). Disability and the education system. The Future of Children, 22(1), 97-122.

Conderman, G., & Hedin, L. (2012). Classroom assessments that inform instruction. Kappa Delta Pi Record, 48(4), 162-168.

Courtade, G., Spooner, F., Browder, D., & Jimenez, B. (2012). Seven reasons to promote standards-based instruction for students with severe disabilities: A reply to Ayres, Lowrey, Douglas, & Sievers (2011).

Education and Training in Autism and Developmental Disabilities, 47(1), 3-13.

Kurz, A., Elliott, S., Lemons, C., Zigmond, N., Kloo, A., & Kettler, R. (2014). Assessing opportunity-to-learn for students with disabilities in general and special education classes. Assessment for Effective Intervention, 40(1), 24-39.

Lane, S., & Leventhal, B. (2015). Psychometric challenges in assessing English language learners with disabilities. Review of Research in Education, 39, 165-214.

Miller, C. L. (2010). Accountability policy implementation and the case of smaller school district capacity: Three contrasting cases that examine the flow and use of NCLB accountability data. Leadership and Policy in Schools, 9(4), 384-420.

U.S. Department of Education. (2014). Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives. Retrieved from: <http://www2.ed.gov/programs/sfgp/elswdfaq7182014.doc>.

Final Priority and Requirements

We will announce the final priority and requirements in a notice in the Federal Register. We will determine the final priority and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities or requirements subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563:

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal

governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory



Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority and these proposed requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

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Dated: March 16, 2016

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Michael K. Yudin,  
Assistant Secretary  
for Special Education and  
Rehabilitative Services.

## Appendix 1

### Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities-- National Technical Assistance Center to Increase the Participation and Improve the Performance of Students with Disabilities on State and Districtwide Assessments.

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Increase the Participation and Improve the Performance of Students with Disabilities on State and Districtwide Assessments (Center). The Center must achieve, at a minimum, the following expected outcomes to support SEAs and LEAs in the implementation of appropriate, high-quality assessments for students with disabilities:

#### Knowledge Development Outcomes.

(a) Increased body of knowledge on evidence-based practices to collect, analyze, synthesize, and disseminate relevant information about State and districtwide assessment of students with disabilities, including topics such as--

(1) Including students with disabilities in accountability systems;

(2) Assessment accommodations;

- (3) Alternate assessments;
- (4) Universal design of assessments;
- (5) Technology-based assessments;
- (6) Formative assessments;
- (8) Competency-based assessments;
- (7) Methods for analyzing and reporting assessment data;
- (8) Application of growth models in assessment programs;
- (9) Uses of formative and summative assessment data to inform instructional programs for students with disabilities;
- (10) Assessing English Learners (ELs) with disabilities, including ensuring that all ELs with disabilities receive appropriate accommodations, as needed, on English Language Proficiency (ELP) assessments and that the results of ELP assessments for students with disabilities are validly used in making accountability determinations under the Elementary and Secondary Education Act of 1965, as amended (ESEA); and
- (11) Ensuring that assessments are fair, are of high quality, take up the minimum necessary time, provide the same educational benefits for all test takers, and reflect

the expectation that students will be prepared for success in college and careers.

Note: In order to meet the requirements of paragraph (a), the Center will conduct a comprehensive review of existing research on evidence-based practices available from a variety of reliable sources, such as findings from research funded by the Institute of Education Sciences (IES), including the National Research and Development Center on Assessment and Accountability for Special Education (NCASSE) and other federally funded and non-federally funded sources.

(b) Increase the capacity of SEA and LEA personnel to assess and track SEA and LEA needs for including students with disabilities in State and districtwide assessments, including, as appropriate, improving the skills of SEA and LEA personnel in any of the topics listed in paragraph (a) of this section.

Technical Assistance and Dissemination Outcomes.

(a) Increased capacity of SEA and LEA personnel to collect and analyze summative assessment data, and formative assessment data (in the case of LEA personnel), on the performance of students with disabilities.

(b) Increased capacity of SEA and LEA personnel to use State and districtwide summative assessment data, and formative data from districtwide assessments (in the case of LEA personnel), to evaluate and improve educational policies and increase accountability for students with disabilities.

(c) Increased capacity of LEA personnel to use formative and summative assessment results in instructional decision-making to improve teaching and learning for students with disabilities.

(d) Increased awareness about how students with disabilities are included in and benefit from current and emerging approaches to State and districtwide assessment, including topics listed in paragraph (a) of the Knowledge Development Outcomes section of this priority.

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